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Current Topics.

The New Law Officers.

As was generally assumed would be the case, Sir WILLIAM JOWITT has been continued in his office as Attorney-General in the reconstituted Government. This is all to the good, for Sir WILLIAM has proved a tower of strength to the Ministry both in the House of Commons and in the courts. The nomination to the office of Solicitor-General has, however, come as a great but pleasant surprise to the profession, for, with a self-renunciation that is characteristic of him and that augurs well for the maintenance of that united front which in these days, in view of the economic stress, it is essential that all should present, Sir THOMAS INSKIP has consented to accept the post after having held the higher office of Attorney-General in the Conservative administration. It is, we believe, an almost if not quite unprecedented occurrence for one in the front rank of professional success to put aside personal considerations in this way and agree to serve in a subordinate post. Almost a hundred years ago, it is true that one who had been Attorney-General was fain to accept the humble office of Master in Chancery, but his was a very different case, for the wonder was how he ever came to be appointed to the high office of Attorney-General, a post for which he had few, if any, qualifications.

A Company's Post-1862 Deed of Settlement.

Re Hewitt Brothers Limited, a petition under s. 5 of the Companies Act, 1929, to confirm a special resolution altering the above company's Memorandum of Association, was heard by FARWELL, J., in the Vacation Court on 26th August, and is of considerable interest and importance to certain other companies registered about forty or fifty years ago. At that time the ingenious—perhaps too ingenious—Mr. PALMER devised a scheme for registering limited companies, not in the usual way with Memorandum and Articles of Association, but with a simple deed of so-called "Articles of Association," incorporating the usual clauses both of Memorandum and Articles in the one document. The virtues of this scheme are set forth in his "Company Precedents" (see 13th ed., p. 960), but the main and obvious reason for this return to an archaic form was, of course, avoidance of *ad valorem* stamp duty. It was not really appropriate to a limited company under the Act of 1862, and it was so held by the Court of Appeal in *R.* v. *Registrar of Joint Stock Companies, ex parte Johnston* [1891] 2 Q.B. 598. Before that decision, however, many of Mr. PALMER'S clients had taken these deeds, virtually old-fashioned deeds of settlement, to Somerset House, and, with his name and reputation behind them, companies had been so registered. Thus, with their certificates under s. 18 of the Act, their constitution could not be challenged. According to Mr. PALMER, many of the leading brewery companies had adopted this procedure, as in fact the above petitioners were. In these days, however, when pre-1862 companies are rare and those with deeds of settlement still rarer, for Memoranda and Articles of Association have largely been substituted for them under s. 264 of the Act of 1908 (now s. 334 of the Act of 1929), the company found their constitution decidedly inconvenient, and were minded to change it. They could not use the machinery of s. 334, however, for it is only applicable to pre-1862 companies. Section 5 of the present Act enables a company to "alter the provisions of its Memorandum" for various reasons with the leave of the court. The question thus arose whether a post-1862 company constituted in this way, without a document specifically in the form of a Memorandum of Association, could take advantage of this provision, and FARWELL, J., has in the above case held that it can do so. Some of the object clauses in the so-called "Articles" were enlarged, and others were added to make a new Memorandum, and the company, as it was of course entitled to do, has without going to the court adopted a new set of Articles, which, in the proper modern form, define its internal constitution.

Prohibited Degrees: Marriages and the Church.

THE RECENT *impasse* at St. Clement Danes again illustrates the very unsatisfactory nature of the methods adopted by Parliament in the matter of marriages allowed by statute, but not by ancient canon law. The Marriage (Prohibited Degrees of Relationship) Act, 1931, permits a man to marry his deceased wife's niece, in effect on the same footing as the Deceased Wife's Sister's Marriage Act, 1907, enabled him to marry her sister. A widower who desired to contract such a marriage gave notice of his wish to the incumbent of St. Clement Danes. The Act of 1907 contemplated the lawful refusal of a clergyman to celebrate a marriage validated by it, but neither the 1907 nor 1931 Act imposes any veto on him. The clergyman in question, in fact, offered no objection, and the banns were duly called in his church. At practically the last moment, Dr. PERRIN, the Bishop of Willesden, acting for the Bishop of London, absent in Canada, sent a telegram to the Vicar, enjoining him "in the name of God" not to celebrate the marriage. What the legal position would have been if the Vicar had disregarded the Bishop's veto might give rise to

nice questions, but, placed by the Bishop in the unpleasant dilemma of disobeying his spiritual superior or going back on a word which must have been regarded by the person concerned as in the nature of a promise, he chose the latter. One must suppose that the veto was sent as soon as the matter came to the knowledge of the Bishop, otherwise there could be no excuse for his delay. The reason given was that the marriage was against Church law, but its validation by civil law requires the Church also to recognise its validity, as laid down in the clearest possible terms in *Thompson* v. *Dibdin* [1912] A.C. 533, and our views as to the way the law laid down in that case has been treated by those in authority in the Church were stated a year ago (see 74 SOL. J. 571). The present position cannot surely satisfy either Bishops, clergy, or laity. As to whether a bridegroom so disappointed could sue parson or bishop for money expended on decorating a church for a ceremony thus forbidden is a question on which legal students may perhaps pleasantly exercise themselves.

An Estate Agent's Commission.

THE ELUSIVENESS of an estate agent's remuneration has been demonstrated in many recent cases (see *ante*, pp. 75, 290 and 390), but in none more strikingly than in *Raymond* v. *Wooten* (*The Times*, 28th July, 1931) which was an appeal to the Divisional Court from a decision of the Judge of the Willesden County Court. The learned county court judge had awarded the plaintiff, an estate agent, £43 as his commission under the following circumstances. The defendant had employed the plaintiff to find a purchaser for her house in Golder's Green in May, 1930, on the terms that he should be sole agent for one month. The price asked was £1,750 and in September the plaintiff obtained an offer to buy for £1,550 "subject to contract," and subject to the results of an inspection of the property proving satisfactory. The inspection did not prove satisfactory, and the prospective purchaser then made a second offer to purchase for £1,450, also "subject to contract." This offer was accepted conditionally on a deposit being paid, but a few days later, on the same day as the payment of the deposit, the defendant accepted another offer of a higher price, and withdrew her acceptance of the offer to purchase for £1,450. Mr. Justice CHARLES pointed out that it had been definitely laid down by the Court of Appeal in *Keppel* v. *Wheeler* [1927] 1 K.B. 577, following *Chillingworth* v. *Esche*, 68 SOL. J. 80; [1924] 1 Ch. 97, that an agreement "subject to contract" was not binding, as it was still in the state of negotiation. The former was a case where it was held that the agent's duty to disclose further and better offers to his client did not end with the making of such an agreement, but continued until a binding contract had been made. As therefore in the case under review the plaintiff had not fulfilled his duty by making such a contract, he was not entitled to his commission. Furthermore the agent was not entitled to damages for breach of contract whereby he was prevented from earning his commission, as the defendant had done nothing wrong in repudiating an agreement which was subject to contract. Mr. Justice SWIFT concurred in Mr. Justice CHARLES' decision and the appeal was allowed with costs. In *Bentall, Horsley and Baldry* v. *Vicary* [1931] 1 K.B. 253 it was decided that a person who sells his property without the intervention of an agent is not guilty of a breach of contract to employ another as "sole agent" in the absence of an express prohibition to sell direct. In the case under review the vendor actually sold through a second agent, but this happened after the term of sole agency of the first agent had expired. It is clear, however, from *Bentall, Horsley and Baldry* v. *Vicary* that had the sale through another agent occurred during the period of sole agency of the first agent the appeal in the case under review could not have been allowed.

Bail.

BAIL, as is generally well understood, is a process by which persons who have been brought into the presence of the criminal law are—before their business is concluded—allowed to go away on a promise to return for its completion. It is the antithesis of keeping them in custody in the meanwhile.

Statutes, fairly well understanded of the practitioner and of the court, provide for admission to bail and regulate the procedure.

Those who are interested or curious will find the subject adequately dealt with in the pages of "Archbold's Criminal Pleading" and of "Stones' Justices' Manual."

Bail is forbidden in cases of treason, but this type of crime is sufficiently rare to justify passing it over with so much notice only.

Bail in cases of murder is not granted, as a matter of practice. The reason is obvious, for the seriousness of the crime gives rise to doubt whether it may be safe to leave the defendant at large and whether—with his neck at stake—he could be expected to be faithful to his parole.

The problem of bail, as it arises every day, is in cases that fall short of murder and in which it lies within the discretion of the court to grant bail, and, if granted, to fix the recognizance.

Refusal to grant bail by a court of first instance is not final, as application may be made elsewhere, but there is no reason why courts of first instance and, too, those other authorities which are now empowered to grant bail, should not appreciate and understand the principles upon which they are bound to proceed.

There may be a discretion, but discretion must be properly exercised. It does not mean that bail may be granted or refused at the whim of a magistrate or the fancy of a policeman, or because someone does not like the defendant's personal appearance or thinks that to keep him in custody will—as the boy with the garden roller is reputed to have observed—"learn him to be a toad."

The great principle governing the grant or refusal of bail is just this: if the defendant is allowed to go away on his own or another's promise, is there a reasonable prospect of his return to face or complete his trial, or are the ends of justice likely to be defeated by his absconding?

Perhaps the case may have proceeded further and the defendant may have been convicted, only remaining the sentence of punishment.

In that event the inducement to abscond is greater and the hardship of imprisonment is less, because the issue is no longer in doubt and the defendant is in some degree proved worthy to be punished. These circumstances can, however, in proper cases be met by greater stringency in the conditions of bail.

A difficulty of another sort arises where there has been a conviction and an appeal against the conviction is pending.

Here, too, is an added inducement to abscond, but bail can still be arranged and granted by ways that need not here be elaborated.

The point which is not always understood and which is vital is that until a person has been tried and convicted, unless there is a probability of his running away, it is not just to keep him in durance.

The underlying principle has been enunciated: there is a further element that is material. Bail may not altogether be safe—either at all or at some particular stage in the proceedings.

There is no difficulty in understanding why. Firstly, the defendant may be unsafe, to himself or others, by reason of *primâ facie* mental instability.

Or there may be a possibility of other charges, which have to be the subject of investigation and which investigation could not proceed properly if the defendant were at large.

Or there is a reasonable prospect that if the defendant is left at large, witnesses will be interfered with and justice thereby perverted.

These matters may properly be considered on applications for bail. Sometimes suitable conditions of bail will meet the difficulty.

The defendant may be asked to deposit his passport or the number of the sureties or the amount of the bail may be increased. Or bail, temporarily withheld, may be granted later.

Subject however to such considerations as these, the guiding principle, which may be repeated, is this—a person is innocent till guilt is proved, and unless there be reasonable apprehension of his running away or his liberty would be a cause of unsafety —a man still innocent must, not may, be admitted to suitable bail.

And, of course, whether or not the applicant is popular with the police or whether the court has formed a favourable or an unfavourable estimate of his value as a citizen, is absolutely and entirely beside the question.

Appeals to the High Court by Case Stated.

[Contributed.]

Courts of summary jurisdiction have to deal with a vast number of matters and Parliament is constantly adding to their duties and responsibilities. With powers so extensive it is not surprising that these courts have frequently to deliver judgment and arrive at decisions upon subjects of far-reaching importance to His Majesty's lieges. It necessarily follows, also, that some of the contesting parties will often be dissatisfied with the justices' decisions.

Parliament has accordingly afforded certain rights of appeal from such decisions. One such right is an appeal to the High Court by way of a special case stated by the justices. The statutes conferring this right are the Summary Jurisdiction Act, 1857 (20 & 21 Vict. c. 43), and the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49). The latter Act incorporates the Act of 1857 as far as it is applicable and the procedure is regulated by both statutes. In case of any inconsistency between the two Acts the provisions of the Act of 1879 are, to be observed (*Stokes* v. *Mitcheson* [1902] 1 K.B. 857; 50 W.R. 553). Moreover, when justices state a case they are deemed to have stated it in the exercise of all their powers, whether of the Act of 1857 or of 1879 (*Rochdale Building Society* v. *Rochdale Corporation* (1886), 51 J.P. 134).

The right of appeal to the High Court by case stated is (by s. 33 of the Act of 1879) given to any person who is aggrieved by a conviction, order, determination, or other proceeding of a court of summary jurisdiction on the ground that it is erroneous in point of law or is in excess of jurisdiction. This is an enlargement of the provisions of s. 2 of the Act of 1857.

The party desiring a special case to be stated must make application to the court of summary jurisdiction within seven days from the date of the proceedings to be questioned (see Summary Jurisdiction Rules of 1915, r. 52). The Act of 1857 limiting the time to three days is superseded. Sunday is reckoned in this period, even although it may happen to be the last day (*Wynne* v. *Ronaldson* (1865), 13 W.R. 899).

The application must be left with the clerk to the justices together with copies for each of the justices who constituted the court (Rule dated 20th March, 1906). These copies, as well as the original application, are to be left within the prescribed period of seven days (see *Rex* v. *Stoke-on-Trent Justices* [1926] 2 K.B. 461). It is the duty of the clerk to the justices to forward the copies to the respective justices.

The next step is for the applicant to enter into a recognisance, with sureties if required, to prosecute the appeal without delay, to submit to the judgment of the court appealed to, and to pay the costs, if any, awarded against him (Summary Jurisdiction Act, 1857, s. 3). This recognisance must be entered into before the case is delivered, otherwise the High Court cannot entertain the appeal (*Walker* v. *Delacombe* (1894), 58 J.P. 88).

A person entering into a recognisance on behalf of a limited company must first be duly authorised by resolution (*Southern Counties Deposit Bank, Ltd.* v. *Boaler* (1895), 59 J.P. 536). Where the appellants are a local authority, if the clerk enters into the recognisance it must show that it was entered into on their behalf and that it is their property which is made liable (*Leyton Urban District Council* v. *Wilkinson* [1927] 1 K.B. 853; 70 Sol. J. 1069). But if the clerk to a local authority takes proceedings in his own name and asks for a case to be stated, he is the appellant, and the recognisance should be his personal recognisance, binding his own goods (*Lawrence* v. *Martin* [1928] 2 K.B. 454).

The case is to be stated within three calendar months after the date of the application (see Rule dated 20th March, 1906). This has been held not to be a condition precedent but directory only and the court held they had jurisdiction to entertain the appeal although the case was not lodged within the three months (*Hughes* v. *Wavertree Local Board* (1894), 58 J.P. 654).

In practice the case is usually drawn up by the appellant's solicitor and submitted to the respondent's solicitor. After approval, it is forwarded to the clerk to the justices, who thereupon obtains the signatures of the justices to it. In the event of the solicitors of the respective parties failing to agree, the case is settled by the justices. It is requisite that the case be signed by all the justices who heard the matter whether assenting to or dissenting from the decision of the court (*Barker* v. *Hodgson* (1904), 68 J.P. 310). In the case of justices whose signatures cannot be obtained within the three months, an extension of time will be granted (*Nantyglo Urban District Council* v. *Ebly* (1905), 69 J.P. 40). But in the event of one of the justices dying before the case is stated and signed it is sufficient if signed by the survivors (*Marsland* v. *Taggart* [1928] 2 K.B. 447. See also *Grocock* v. *Grocock* [1920] 1 K.B. 1; 63 Sol. J. 627, where a stipendiary resigned before signing the case).

There is no special form prescribed for the case, but the facts, contentions and findings and the questions raised are required to be clearly and concisely set out. The facts only as found by the justices are to be stated and not the evidence on which their findings were based (see *Betts* v. *Stevens* [1910] 1 K.B.1 per Lord Alverstone, L.C.J.). The case must be divided into numbered paragraphs, each dealing with distinct portions of the subject. The High Court will not hear argument on any point not raised before the justices (*Marshall* v. *Smith* (1873), L.R. 8 C.P. 416). But a fresh point of law based on the facts admitted and which no evidence could alter may be argued before the court (*Knight* v. *Halliwell* (1874), L.R. 9 Q.B. 412; 22 W.R. 689; *Kates* v. *Jeffery* [1914] 3 K.B. 160).

It is provided by s. 2 of the Act of 1857 that the appellant "shall within three days after receiving such case transmit same to the court . . . first giving notice in writing of such appeal with a copy of the case so stated and signed" to the respondent. The case is lodged at the Crown Office. Both these requirements are conditions precedent and Sunday is included in reckoning the three days (*Aspinall* v. *Sutton* [1894] 2 Q.B. 349). Thus, if the appellant's solicitor receives the case from the justices on a Thursday and he does not transmit it to the Crown Office till the following Monday it is too late (*Pennell* v. *Uxbridge Churchwardens* (1862), 10 W.R. 319). It is a sufficient compliance, however, if the case be deposited in the letter-box at the Royal Courts of Justice

on the third day, but at such a late hour that it was not received at the Crown Office until the following day (*Holland* v. *Peacock* [1912] 1 K.B. 154).

It must be observed that the above-mentioned section requires the notice of appeal with copy of the case to be served on the respondent before the appellant transmits the case to the Crown Office. If this is not complied with the court has no jurisdiction to hear the appeal (*Edwards* v. *Roberts* [1891] 1 Q.B. 302; *Hollidge* v. *Ruislip-Northwood U.D. Council* (1913), 77 J.P. 126). In certain circumstances, service on the respondent's solicitor has been held sufficient (*Anderson* v. *Reid* (1902), 66 J.P. 564; *Wills* v. *McSherry* [1914] 1 K.B. 616; *Godman* v. *Crofton* [1914] 3 K.B. 803).

The hearing of the appeal is before the Divisional Court (S.C.J. (Consolidation) Act, 1925, 15 & 16 Geo. V. c. 49, s. 24) Only one counsel on each side will be heard. The court will hear and determine the questions of law arising on the case and will reverse, affirm or amend the decision appealed from (S.J. Act, 1857, s. 6) or, in its discretion, it may remit the matter to the justices with its opinion thereon, or make such order in regard to the matter as it may think fit (*ibid*).

The court's decision upon any criminal cause or matter is final and conclusive (ss. 31 (1) (*a*); 63 (6) of the S.C.J. (Consolidation) Act, 1925) but upon civil matters there is a right of appeal to the Court of Appeal by leave of the Divisional Court (*ibid*, ss. 31 (1) (*f*); 25).

Decisions and their Implications.

In his "Essays in Jurisprudence and the Common Law," Mr. A. L. Goodhart, the editor of the *Law Quarterly Review*, has an instructive paper on "Determining the *Ratio Decidendi* of a Case," which reveals in striking fashion the difficulty which the practitioner is apt to find in ascertaining what precisely has been decided in any particular case. There is a tendency on the part of everyone to attribute sacrosanctity to all that a judge says in the course of his judgment, and in this way what are subsequently declared to be mere *obiter dicta* are accepted as part of the *ratio decidendi* and as binding in other cases. Mr. Goodhart, in the paper in question, puts in a useful caveat against hasty acceptance of every utterance of a judge as legal gospel and counsels us to be cautious in our examination of every decision to be sure that we have reached the legal kernel it may contain. But not only is it oftentimes no easy task to ascertain with accuracy what a particular case has decided; it is also a matter of very considerable difficulty to discover the implications it may contain. A notable example of this was furnished by the famous case of *In re Polemis and Furness, Withy & Co.* [1921] 3 K.B. 560, on the question of damages. Did that decision affect the rule laid down in *Hadley* v. *Baxendale*, 9 Ex. 341, that: "Where two parties have made a contract, which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may fairly and reasonably be considered arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it?" In the *Polemis Case* a steamship was lost by fire while being discharged by workmen employed by the charterers. The arbitrators to whom the question of liability was referred found that the fire was caused by a spark igniting petrol vapour in the hold, the vapour coming from leaks from cargo shipped by the charterers, and that the spark was caused by the Arab workmen employed by the charterers negligently knocking a plank out of a temporary staging erected in the hold, so that the plank fell into the hold, and in its fall by striking something made the spark which ignited the vapour. It was expressly found that the causing of the spark could not reasonably have been anticipated from the falling of the plank, though some damage to the ship might reasonably have been anticipated. The Court of Appeal decided that the charterers were liable for the whole damage, on the ground that the loss was the direct consequence of the negligence of the charterers' servants. The problem raised by the decision was this: did that decision apply in the assessment of damages for breach of contract, or was it limited in its scope to the damages to be awarded in cases of tort? The text-writers have given divergent answers to this question, being unable to be sure whether the claim was in contract or in tort. Recently it occurred to Dr. McNair to probe the matter more closely, and in doing so he obtained a copy of the relevant documents, and from an examination of these, which he prints in the new number of the *Cambridge Law Journal*, he has demonstrated that the decision is not an authority as to the remoteness of damage in cases of contract, the cause of action having been laid exclusively in tort. The authority of *Hadley* v. *Baxendale* in relation to the question of damages for breach of contract has consequently not been impinged upon, but why a different rule should apply in cases of negligence from that established in cases of breach of contract may not be very obvious.

Company Law and Practice.

XCIV.

(*Continued from p.* 597.)

JUST AND EQUITABLE.—I.

The jurisdiction of the courts to wind up companies is, of course, purely the creature of statute, just as the companies themselves are, and the courts have been given considerable latitude with regard to the grounds on which they may make winding up orders. It may perhaps be useful first of all to indicate briefly what courts have the winding up jurisdiction.

The section which confers the jurisdiction is s. 163 of the Companies Act, 1929. The High Court has jurisdiction to wind up any company registered in England, and this jurisdiction is exercised by the Chancery Division in a special department now referred to in the headings of proceedings as the Companies Court. This jurisdiction is confined strictly to companies registered in England, and cannot be invoked so as to get a company which is registered in Scotland, but carries on business in England, wound up by the English court. The position of companies of this kind is somewhat anomalous, and may give rise to unexpected situations, not only in connexion with winding up, to which I hope at a later date to be able to make reference in this column. The appropriate Palatine Court has winding up jurisdiction concurrent with that of the High Court as regards companies which have their registered office within the jurisdiction of such court (s. 163 (2)); while, where the amount of the share capital of a company paid up or credited as paid up does not exceed £10,000, the county court of the district where the registered office is situate has concurrent jurisdiction, though this latter may be excluded by order of the Lord Chancellor in any particular case, and must be, in the case of any county court not having jurisdiction in bankruptcy (s. 163 (3), (5)). The court exercising the stannaries jurisdiction has also some jurisdiction, but it hardly seems necessary here to enlarge on this.

The county court jurisdiction, however, is worthy of a moment's attention, if only by reason of the fact that it is so comparatively seldom invoked. The county court is, or is supposed to be, the poor man's court, though the costs there are frequently criticised as being excessive, but so far as winding up proceedings are concerned, there appears to be very little advantage to be gained by taking action in the county court, while there are definite disadvantages in taking such a course. The winding up of a company by the High

Court is a simple, cheap and quick process, so far as the proceedings up to the order are concerned; the evidence is given by affidavit, and the petitions are dealt with frequently and expeditiously; while both before and after the order all proceedings, in so far as they fall to be dealt with by officials, are dealt with by persons whose experience of them is gained by constant usage, and not by occasional contact, so that on this head alone there are great advantages. It may be that county court costs are somewhat less, though in the absence of definite information it is not possible to say, but the merits of the High Court for this procedure have been so widely recognised that it is the tribunal which is most usually appealed to by persons desirous of obtaining an order for the compulsory winding up of a company.

Section 168 sets out the circumstances in which a company may be wound up by the court—it is not my intention to deal with these here, other than the sixth and last one enumerated in the section—but I may pause to say that the fifth, which says that a company may be wound up by the court if it is unable to pay its debts, must not be taken alone, but reference must be made to s. 169, which defines for the purposes of the Act what is inability to pay debts. But to return to s. 168 (6), this provides that a company may be wound up by the court if the court is of opinion that it is just and equitable that the company should be wound up. This phrase, inevitably, has been made use of by persons who have had no real case, just in the same way as one may hear vague appeals to, say, the general equitable jurisdiction of the court in cases unconnected with companies, but it is undoubtedly of use in some cases.

Before deciding whether, in any particular case, the court will be likely to act under this sub-section, there is one principle which must be borne in mind particularly, and that is, that the court will not interfere with matters which are purely domestic; it has always refused to manage companies for their shareholders. Thus, mere mismanagement of the affairs of the company is not of itself a ground for obtaining a winding up order under this sub-section, though, of course, if the mismanagement is sufficiently serious, and is persisted in for a sufficient length of time, it may well produce other grounds for a winding up, though this may be small consolation for a shareholder whose holding is steadily depreciating in value.

It was at one time thought, in view of a statement made by Lord COTTENHAM, in *Ex parte Spackman*, 1 Mac. & G. 170, at p. 174, that this just and equitable clause ought to be construed in reference to matters *ejusdem generis* as those in the preceding five sub-clauses of the section, but this is not the case, as is explained in the judgment of the Privy Council in the case of *Loch* v. *John Blackwood Limd.* [1924] A.C. 783, where, after enumerating the first five sub-clauses of the section (168 of the Companies Act, 1929) the judgment goes on: "It seems plain enough that beyond these cases there is the whole category of fraudulent administration under which a company's property might be imperilled or transferred into the pockets of its directors, when the case for winding up would be of supreme urgency. Yet, if the argument as to *ejusdem generis* were sound, it would logically exclude such a case from the grounds for winding up, which is absurd." There is, of course, a great difference between mere mismanagement, and the fraudulent administration there referred to, and next week I will enlarge upon it.

(To be continued.)

CANADA AND THE PRIVY COUNCIL.

At the annual meeting of the Canadian Bar Association, opened at Murray Bay, Quebec, on Wednesday in last week, Mr. Louis St. Laurent, K.C., in his presidential address, advocated that all Constitutional disputes arising within the Dominion should go to the Supreme Court, and that its decision should become binding, both on that court and on the Privy Council. He felt that this would be the first step towards making the Supreme Court really supreme. There was a growing feeling against appeals to the Privy Council in ordinary cases.

A Conveyancer's Diary.

The Overreaching Powers under the L.P.A.

Last week I dealt with the overreaching powers under the L.P.A., 1925, s. 2, and considered those powers as conferred by reference to the S.L.A. I mentioned some cases of interest regarding the question who is or is not a tenant for life or a person having the powers of a tenant for life and who is a statutory owner upon whom the powers of a tenant for life are conferred.

Pursuing that subject upon the same lines, I may mention *Re Higgs; Symonds* v. *Rhodes* [1927] W.N. 316.

The case was a curious one, but whilst (fortunately) reported at some length in the "Weekly Notes," has not been thought worthy of a place in the "Law Reports." Nevertheless the case has points of interest.

A testator devised a building then used as a church which he had erected "to the Ecclesiastical Commissioners for providing a church and churchyard in connexion therewith." The church was to be used exclusively for Church of England services. The testator further devised a house (which he had also erected upon adjacent land as a residence for the minister of the said church) to trustees upon trust to permit the "minister for the time being officiating at the said church or building to reside and have the sole use and enjoyment of the said messuage and premises during such time as he should conduct or cause to be conducted in a proper manner" certain services. The testator further directed that on failure or omission of the minister for the time being to conduct such services, the trustees were to let the house until another minister should be appointed on the same terms and conditions, it being a further condition of "residence or use or benefit of the said messuage and premises" that every minister should be a graduate of the University of Oxford or Cambridge.

By a codicil the testator directed that the minister for the time being of the said church should pay a rent at the rate of £50 per annum to the trustees during such time as he should occupy the house.

By a second codicil the testator revoked the devise of real estate in his will and the directions for payment of the rent of £50 by the minister for the time being of the church, and in lieu thereof devised the residue of his real estate to a devisee and directed that the minister for the time being of the church should pay rent at the rate of £60 per annum to the trustees during such time as he should occupy the house.

It appears from the report that after the death of the testator an order of the Chancery Division was obtained (which seems to have been based upon a deed executed in the testator's lifetime), whereby it was declared that there was a valid subsisting trust to permit the minister for the time being officiating at the church to reside at and have the sole use and enjoyment of the house on payment of £60 a year so long as he should occupy the house as a residence.

The facts were that the house had not for some years been occupied by the minister of the church, but had been let by the trustees at a rent of £110 a year.

Now here was a how-d'ye-do, if you like! Was the parson a tenant for life or a person having the powers of a tenant for life although he did not reside in the house? If not, who was?

Romer, J., who decided the case, cut the gordian knot by deciding that in fact there was no settlement.

His lordship said that there was no doubt that in the ordinary case of a trust to permit a person to reside during his life, and subject to that upon trust for someone else afterwards, that that was a settlement under which the person entitled to reside was the tenant for life or the person having the powers of a tenant for life, but it would, he said, be a strange result if he came to the conclusion that the minister for the time being was a tenant for life, because, whenever a

charitable trust was found which provided a house for the residence of some schoolmaster or caretaker of a public museum, or an incumbent, the person for whom the residence was provided would be entitled to sell the house as tenant for life and enjoy the income of the proceeds. In other words, he would be able to put an end to the charity which was designed for the purpose of providing a residence for a person occupying a particular position or holding a particular office. Therefore, so the argument runs, there could not be any settlement, because if there were the result would be ridiculous.

I dare say that that is so, and have no doubt that the decision was right. I have dwelt upon the case only as one which shows what unexpected difficulties may arise in connexion with the "curtain provisions" of the new Property Acts and how uncertain it is who has the power to make an overreaching conveyance.

I hope to deal with further cases next week.

Landlord and Tenant Notebook.

Are there Usual Provisoes?

The position of parties to a contract for a lease or assignment when there is no express provision for covenants or provisoes, is usually expressed by reference to the well-known phrase, "the usual covenants," no mention being made of a forfeiture clause. Sometimes the contract uses the phrase in question and is silent on the subject of re-entry. In either case the intending grantee may well ask, can he object to the insertion of any, and if so of what, provisoes for re-entry?

It might be argued that the nature of a covenant is so essentially different from that of a condition that the one term ought never to be taken to include the other. But if it ought not, it certainly has; authorities both ancient and modern show that for this particular purpose proviso has been treated as a species of the genus covenant. Thus Bayley, J., in *Bennett* v. *Womack* (1828), 7 B. & C. 627, and Maugham, J., in *Flexman* v. *Corbett* [1930] 1 Ch. 682, both treated the expression "the usual covenants" as a short way of describing all the stipulations of a lease. Once you have an open contract, the law is fairly well settled as to what the lease must contain; and, as is shown by the case of *Hodgkinson* v. *Crowe* (1875), 10 Ch. App. 622, the deliberate use of a generic term—in that case "clauses"—neither enlarges nor diminishes the rights of the parties.

The last-mentioned case laid down that even though the agreement called for "all usual and customary *mining* clauses" the law would not allow the landlord any other proviso than one permitting re-entry in the case of non-payment of rent, which, said James, L.J., "was always inserted without opposition by anybody." And at the same time the learned lord justice expressed himself so strongly on the subject of forfeiture clauses in general that one might well suppose that Equity, while leaning against forfeiture, should not seek an opportunity. When Parliament had passed the Conveyancing Act, 1881, and thus added its weight to that of Equity, there were some who thought that the sanction given to relief called for some relaxation of the rule. In *Re Anderton and Miller's Contract* (1890), 45 Ch. D. 476, an agreement for a seventy years' lease of residential property stipulated for usual covenants to insure from loss by fire, to repair, to pay rent and to pay outgoings; the draft submitted by the lessor's solicitors contained these, plus a proviso covering breaches of any of them. Chitty, J., recognised that the argument based on the new statute had some force; but his decision was that as the agreement had not mentioned provisoes at all, any proviso inserted must be reasonable and must also be in accordance with the prevailing practice, and he refused to allow a re-entry clause covering anything but non-payment of rent. The requirement as to prevailing practice suggested the possibility of future revision of the rule; and while it was again followed two years later in *Re Lander and Bayley's Contract* [1892] 3 Ch. 41 (in which the contract simply provided for a "lease to be granted") it is interesting to read the observations of Maugham, J., in *Flexman* v. *Corbett*, *supra*. The learned judge had decided the issue on the ground that a particular covenant was not usual, but had emphasised the fact that what was usual at one time and in the case of one class of property might not be so at another time or in the case of other property; and while, as regards the general proviso, he considered the rule still binding, he said (p. 682), that the matter was one which might usefully be reconsidered in the light of modern evidence at some future time. And, as our readers know, the general proviso is becoming the rule, and a proviso limited to non-payment of rent exceptional.

As in the case of covenants, special circumstances connected either with the nature of the property or the wording of the agreement have provided exceptions to the general rule. In *Haines* v. *Burnett* (1859), 27 Beav. 500, the agreement, for the lease of an hotel, was fairly elaborate, and mentioned generally all such other covenants, clauses and stipulations as are usually inserted in leases of property of a similar description: the landlord was entitled to a proviso for re-entry on bankruptcy, etc. Licensed premises are, in fact, always apt to provide exceptions; and provision for forfeiture on breach of covenant to carry on no other business was held to be usual in *Bennett* v. *Womack*, *supra*, while in *Allison* v. *Clayhills* (1908), 97 L.T. 709, although non-payment of rent was not covered, a proviso meeting the event of bankruptcy was held to be "common practice if not absolutely usual."

Our County Court Letter.

LIABILITY FOR ROPES ACROSS HIGHWAYS.

Reserved judgment was recently given at Dewsbury County Court in *Gledhill* v. *Batley Corporation*, in which the claim was for £75 as damages for personal injuries, by reason of the negligent closing of an entrance from a road (which was under repair) to a passage into a yard, used by the plaintiff as a garage for his motor cycle. The plaintiff had ridden in and out of the passage three times in daylight on the 4th November, 1930, but at 11.15 p.m. (when again attempting to ride through) he was thrown over by a rope stretched along the outer edge of the causeway. His Honour Judge Woodcock, K.C., observed that (*a*) the plaintiff had never before seen the rope in that position, (*b*) the line of lamps shed no light on the road and causeway, (*c*) it was unnecessary for the public safety to stretch a rope across the entrance to the passage from the road, (*d*) any such protection should have been of a more striking character than a rope, and should have been properly lighted. It was therefore held that the inconspicuous nature of the guard, and the absence of a light, constituted a trap, and judgment was given for the plaintiff, with costs. It is to be noted that the placing of a rope in such a position is now an offence under the Road Traffic Act, 1930, s. 51.

THE RIGHTS OF RACEGOERS.

The above subject has been considered in two recent cases. In *Dartnall* v. *Hoy*, at Exeter County Court, the claim was for £5 due as prize money won by the plaintiff's "Lady Agnes," at Kentisbeare pony races. The defence was that an objection had been upheld and that "Lady Agnes" was disqualified through being over height. The plaintiff's case was that the official measurer had passed the horse for the third race, which was for animals of 14–2 h.h. or under, and that he had received £3 as the second prize, so that the horse could not be disqualified for the last race, which it won. The official measurer's evidence was that he measured "Lady Agnes" with three

others for the first race, which was for animals of 15 h.h. or under, but he told the committee that he could not guarantee the horses' qualification without testing them from a concrete floor. The defendant's evidence was that (*a*) two verbal objectors had each lodged a 10s. fee after the last race, and two horses had been disqualified, (*b*) the committee had not prevented "Lady Agnes" from running, as they desired to make as much sport as possible, instead of having to pay £8 for a walk-over. His Honour Judge The Hon. W. B. Lindley, commented upon the committee (1) failing to prevent unqualified horses from starting, (2) not giving a hearing to the party concerned when giving a "final" decision in a dispute. The onus was on the plaintiff, however, to prove that the pony was qualified, and there was no outside evidence as to its being 14–2 h.h. or under. Judgment was, therefore, given for the defendant, but without costs, as the matter had been mishandled by the committee.

In *Wellington* v. *Greyhound Racing Association*, recently heard at Cardiff County Court, the claim was for £9 3s. 3d., the balance due upon a totalisator transaction. The plaintiff had staked £2 10s. and her winnings should have been £15 12s. 6d., but she was only paid £6 9s. 3d. The defence was that it was impossible for the totalisator to make such a mistake, and that the plaintiff had received the full amount due. His Honour Judge Thomas agreed that everything was done to check the correctness of the totalisator, and there was no suggestion of dishonesty. A mistake had nevertheless occurred, and judgment was therefore given for the plaintiff, with costs. Compare "The Remuneration of Jockeys," in the "County Court Letter," in our issue of the 28th February, 1931 (75 Sol. J. 151).

Practice Notes.

RETURN OF DEPOSIT ON NON-COMPLETION.

The above subject has been considered in two recent cases. In *Crowther* v. *Belton* at Sheffield County Court, the claim was for £16 10s., being the amount due upon the rescission of a contract by mutual consent. The plaintiff (having agreed to buy a house for £950, and to pay £65 a year as rent until completion) had paid £10 as a deposit, and £6 10s. on account of rent, but, being unable to continue the payments, he had been released from the contract by the defendant. The house had then been advertised by the defendant, and a tenant had paid £20 for the plaintiff's fixtures, but this amount was retained by the defendant on account of arrears of rent. The plaintiff's case was that his rent account should have been credited also with the £16 10s., but the defendant contended that that sum was only to bind the contract, and was therefore lost to the plaintiff. His Honour Judge Greene, K.C., held that the £16 10s. was paid as a deposit towards the first 10 per cent. of the purchase price, and, being earnest money it was forfeited on failure to complete the contract. Judgment was therefore given for the defendant, with costs.

In *Pitcher* v. *Samson*, at Cardiff County Court, the plaintiff claimed £25, being the return of a deposit paid on a house, which he had agreed to buy from a client of the defendant, an estate agent. The purchase was not completed, however, and it was held by His Honour Judge Thomas that the defendant, having acted as stakeholder, was liable to return the deposit to the plaintiff. This decision has been reversed in the Divisional Court, where Mr. Justice Talbot pointed out that the plaintiff had no cause of action against the defendant, and Mr. Justice Finlay concurred in allowing the appeal—judgment being entered for the defendant, with costs.

SALES TO SATISFY ROAD CHARGES (II).

It is to be noted that under the Land Charges Act, 1925, s. 15 (1) and (2), a charge under the Private Street Works Act, 1892, s. 13 (1) must be registered as a local land charge of Class B. The Land Charges Act, 1925, s. 11, provides that such a land charge, when registered, shall take effect as if it had been created by a deed of charge by way of legal mortgage. The particulars of claim may therefore be shortened (if desired) by basing the plaintiff's claim on the land charge, and the evidence will be similarly simplified by proving the registration, and omitting proof of all antecedent matters.

ROAD CHARGES UPON UNCLAIMED LAND (II).

It is to be noted that, if confronted with the difficulties already suggested, the council may attempt to solve the problem by utilising the Land Charges Act, 1925, s. 11. This provides that a land charge, when registered under the above Act, s. 15 (1), as required by that section, shall take effect as if it had been created by a deed of charge by way of legal mortgage. This depends upon whether the council can succeed in registering the land charge against an unknown owner, in which event the adjoining owners should apply to the court under the above Act, s. 10 (8), to vacate the charge, on the ground that s. 10 (2) stipulates registration in the name of the owner, so that any other form of registration is invalid and *ultra vires*.

Correspondence.

Restricting Testamentary Power.

Sir,—I have just read, in your issues for 18th and 25th July, your remarks in favour of restricting the testamentary capacity of married people. I was the more surprised to read these remarks, because on other occasions you have repeatedly pointed out the severe legal disabilities already imposed on married men. The position to-day is that a married woman is practically only a member of her husband's family, legally, when rights are involved. As regards duties, she is completely free and independent of him. Amongst other things, she can at the same time refuse him access and impose on him as his own child her child by another man. Almost the sole remaining legal right of a married man is his testamentary freedom, and I suggest to you that if, under present conditions in England, that be taken from him, he will be reduced to a condition of legal servitude. I further suggest that the matter of interfering with testamentary freedom can well wait until a code be drawn up to deal generally with family rights and duties and give husbands some little protection against wives who are too emancipated to act as such.

The problem of establishing the freedom of married women, without reducing married men to servitude, is no doubt a difficult one. The Romans dealt with it in their time, and I should like to point out that whereas, in Roman law, the early unemancipated wife, who was married in *manum*, had a claim on the estate of her deceased husband, the later emancipated wife, who was married *jure gentium*, had not. It was not open to an emancipated wife to bring the *querela inofficiosi testamenti*. Children, of course, could bring the *querela*, but also the husband could repudiate a child at its birth.

Gauhati, Assam, India. Arthur Brown.
19th August.

Companies Registration.

Sir,—I would like to put on record a recent experience of mine at the Companies Registration Office.

It became necessary in the course of a sale and purchase of a company's business, in which I was acting for the purchaser, to wind up one company and form another to take over the business, and it was considered important that there should be no gap in the continuity of business.

This being explained to the senior official in Room 11, West Wing, everything was waiting for us except the certificate on the day of completion.

For reasons connected with completion it was not possible for me to pay the fees and stamp duties before 2.10 p.m. The certificate of incorporation was issued at 4.5 p.m. the same day.

If all officials in all offices were both willing and able to assist the public and the legal profession in this way there would be less need of "economy cuts" and less talk of "red tape."

Cannon Street, MAX C. BATTEN.
London, E.C.4.
4th September.

The Wills and Intestacies (Family Maintenance) Bill.

Sir,—With reference to the article by Mr. J. C. Gardner, appearing in your issue to-day, I must express surprise that there are apparently so many persons in existence who wish to place fresh fetters upon their neighbours. What we want in this country is a striking off of some of the old fetters *not* a forging of fresh ones.

The Scottish system of giving a certain proportion of a deceased parent's estate to his wife and children no doubt justified its existence in the early days of that country, but it has outlived its usefulness and expediency. One can imagine that in the early days a man seldom left behind him much in the way of property, generally a copyhold cottage and land cultivated as a farm, plus a horse, cow and plough, and as doubtless his wife and children assisted on the farm, which was at the same time their sole means of subsistence, it is easy to understand why the custom arose of dividing up the property for the benefit of the persons referred to. To-day things are different; a parent ordinarily educates his children, often at considerable expense, and places them out in the world, also at considerable expense, to enable them to earn their own living. In most cases when the parent dies the children have accomplished the task of keeping themselves, and are in no need of public assistance.

Why, under these circumstances the parent should be required to allocate a portion of his estate to his children passes my comprehension. The Scottish system tends to discourage marriage, and also to breed a class of persons who "wait for dead men's shoes," instead of relying upon themselves.

Something can be said in favour of the alternative plan of allowing maintenance for a destitute widow and children under age, but the scale should not approach the allowance usually made in the divorce court in order not to check self reliance.

Although the Bill before Parliament is nominally promoted by Miss Rathbone, it is really promoted by a Women's Rights Association. Not long ago a woman connected with the women's movement stated that women were out to get as much as they can, and this declaration naturally puts the opposite sex on its guard, although the policy proclaimed does not seem to differ from the one pursued up to the present.

Bembridge, H. A. CRESWELL.
Isle of Wight.
5th September.

GEORGE BYRON WINSOR and CHARLES HOPE SLEIGH, solicitors, 3, London Wall-buildings, in the City of London, and 489, London-road, Isleworth, in the County of Middlesex (Jenkins, Baker & Co.), incorporating Clements, Williams and Co. and Fullilove, Arnott & Co., dissolved as and from 31st July, 1931, by mutual consent. G. B. Winsor will continue to carry on the said business under the same style or firm as aforesaid.

In Lighter Vein.

THE WEEK'S ANNIVERSARY.

On the 18th September, 1726, Sir Robert Dormer died inconsolable for the loss of his only son, Fleetwood, deceased three months before. Sir Robert had been called to the Bar at Lincoln's Inn in 1675, had had a reasonably successful forensic career, gone into politics and been elected to Parliament, whence he was translated to the Bench of the Common Pleas in 1706. There he sat until his death twenty years later.

ORDEAL BY FRUIT.

A solicitor, prosecuting some boys at Kingston for stealing plums, suggested that as a punishment they should be forced to eat 6 lbs. of them. This, of course, would follow the cheerful fashion of mediæval times when brewers of bad beer might be ordered to drink what they could of the stuff and have the rest poured over them. But before judgment, as well as after sentence, ordeal has its practical uses even to-day, as witness a case in which Lord Reading once appeared for a fruit merchant who was suing a costermonger for the price of a consignment of figs. Harassed by the cross-examination, the defendant at last shouted: "Some of these 'ere figs is in court; if you eat three of them and ain't sick in five minutes, I'll lose me bloomin' case." "Why not, Mr. Isaacs?" asked the judge, but Mr. Isaacs indicated the lay-client for the experiment. The horrified fruit merchant asked his counsel in a whisper what would happen if he didn't eat them, but finding no comfort in his look burst out: "Well, I'd rather lose my case than eat those figs!"

AN UNUSUAL AGENCY.

Astonishing allegations are made against a former official of Bankruptcy Buildings, who has been committed for trial on a charge of obtaining money by false pretences. On one occasion he is said to have taken 10s. from a petitioner as a present for the examiner, purporting later to convey to the donor that official's thanks, together with a promise to do what he could for him. The story recalls the simple and ingenious scheme evolved, after his retirement, by a certain native magistrate in India for the purpose of supplementing his pension. As an old Government servant he was privileged, whenever the sessions judge visited the district, to pay him a formal call and to be privately received. This social duty punctually performed earned him substantial sums from half the litigants interested in the current cause list for the invaluable influence which he purported to exercise in their favour. If they won, it was all his doing. If they lost, why then, the other side must have got at the judge first.

EYE VALUE.

A woman who is suing her doctor in Paris alleges that he caused her to lose both her eye and her husband by wrongly diagnosing her to be suffering from an unpleasant disease which involved the removal of her optic and also seemed to give her spouse grounds for divorce. The result should be interesting, but can hardly be more sensational than a recent judgment from Budapest which laid down that the loss of an eye may be an asset. A beggar woman, who had been run down by a motorist and partially blinded, brought an action claiming £400 damages. The defendant boldly pleaded that he had in fact rendered her a service in her trade or business in inflicting on her a prominent injury calculated to attract the charity of the sympathetic. The beggar was obliged to admit that her profits had, in fact, been enormous and the motorist got judgment. In the circumstances, it is a wonder that he did not counter-claim to recover a *quantum meruit* for services rendered.

Mr. Robert P. Hart, solicitor, of Dormans Park and Strand, W.C., left £20,656, with net personalty £18,102.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, is responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to The Assistant Editor, 29, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

Building Scheme—Restrictive Covenants Imposed by Creator of Scheme—Registration under L.C.A., 1925, by a Purchaser from Him.

Q. 2276. A creates a building scheme of Whiteacre, and sells a plot thereon to B, subject to various restrictive covenants. In order that B may enforce the covenants against subsequent purchasers from A, ought B to register a land charge against A in respect of the implied covenants which have become saddled upon the rest of Whiteacre. If B ought to register a charge in respect of the implied covenants and neglects to do so, what is his position against subsequent purchasers from A ?

A. We do not think that any such registration is necessary or indeed possible. We express the opinion that our subscribers are in error in speaking of the existence of implied covenants being saddled on the rest of Whiteacre. The position is rather that the vendor can be restrained from using or permitting the user of the estate as a whole in a manner contrary to the scheme, and that any one purchaser or his successors in title may enforce the scheme's provisions against another or his successors in title. There is no covenant or agreement, express or implied, as between A as covenantor and B restrictive of the user of the balance of Whiteacre, and thus nothing to register under L.C.A., 1925, s. 10 (1), Class D (ii).

Mortgage—Price of Redemption—Mortgagee's Costs of Applications for Arrears of Interest, etc.

Q. 2277. Some years ago trustees mortgaged certain property to a building society. Subscriptions fell into arrear and the society consulted their solicitors. Several letters were written and attendances made with a view to obtaining payment of arrears, but no action was taken by the society to enforce their security. The trustees are now selling the property. I should be glad of your opinion as to whether the society's solicitors can claim to have their costs for the above-mentioned attendances and correspondence paid by the trustees. Authorities would oblige.

A. We are of the opinion that the costs in question may properly be added to the price of redemption. See "Law Practice and Usage in the Solicitor's Profession," 1923, para. 865, at p. 222, being the opinion of the Council of The Law Society of 2nd July, 1886. We would add that these costs are the mortgagee's costs, and that there is no direct liability on the mortgagor for the payment thereof. The society's solicitors must look to the society for payment, but the society can, in our view, add them to the price of redemption as stated above.

Notice to Quit from Tenant by Elegit.

Q. 2278. A is a tenant by elegit of Whiteacre, and at the time possession was given by the sheriff to him, there was a tenant in occupation, at a rent payable monthly under a verbal agreement. A month's notice to quit has been served on the tenant, and a question arises under s. 25 of the Agricultural Holdings Act, 1923. Section 25 (1) invalidates a notice to quit a holding if it purports to terminate the tenancy before the expiration of twelve months from the end *of the then current year of tenancy*. As payment of rent monthly in the absence of any other evidence makes the tenancy a monthly one, it is suggested that sub-s. (1) does not apply. Again, if sub-s. (1) is applicable, then sub-s. (2) (*d*) excepts the tenancy, on the ground of A being tenant himself of the judgment debtor (see p. 166, Vol. I, "Prideaux's Precedents in Conveyancing") for a term of years interposed between the smaller term of the tenant (at most an annual one) and the freehold vested in the judgment debtor. It is submitted that either on the first or second ground a month's notice to quit is sufficient in this case to give to the tenant in occupation.

A. The Agricultural Holdings Act, 1923, does not apply to tenancies for shorter periods than a year, as appears from the definition of "contract of tenancy" in s. 57 (1), and therefore, s. 25 (1) does not apply, as suggested in the question. It is agreed that s. 25 (2) (*d*) also excepts the tenancy, and that a month's notice to quit is sufficient.

Sales to Satisfy Road Charges.

Q. 2279. A local rural district council has made up several streets under the powers for that purpose conferred on them by s. 6 of the Private Street Works Act, 1892, which powers were put into force in the rural district by an order made in 1925. Notices of the final apportionments were duly served on the owners of the properties fronting on the streets, and the costs charged to them are to be paid in twenty half-yearly instalments. In several cases no payment has been made by the occupants, and action has been taken in the local county court and in the High Court for the recovery of the money due, and judgment has been secured for sums varying from about £40 to £180. These judgment debts, however, have not been satisfied, and in most cases there has not been available sufficient goods upon the premises to justify execution being levied. It is now proposed, therefore, to take advantage of s. 13 of the Act of 1892, which gives the local authority "all the same powers and remedies under the Conveyancing and Law of Property Act, 1881, and otherwise as if they were mortgagees having powers of sale and lease and of appointing a receiver." Whilst it is clear that the local authority has priority to ordinary mortgages which it is known exist upon some of the properties, The Solicitors' Journal is requested to advise upon the exact steps which should now be taken in the local county court in order to take advantage of the power of sale conferred upon the local authority by s. 13 of the Private Street Works Act, 1892.

A. Under the Private Street Works Act, 1892, s. 13, a sale may be carried out, in the case of a willing purchaser, without an order of the court, as this is only necessary under the Public Health Act, 1875, s. 257. It was also suggested, in *Pontypridd Urban District Council* v. *Jones* (1911), 75 J.P. 344, that an originating summons in the Chancery Division (if unopposed) is cheaper and quicker than the county court procedure. If, however, county court proceedings are preferred, the procedure (and a complete precedent of the particulars of claim) will be found set out in *Wealdstone Urban District Council* v. *Evershed* (1905), 69 J.P., at p. 260.

Alternative Claims under Landlord and Tenant Act.

Q. 2280. Referring to the article by Mr. S. P. J. Merlin in your issue of the 17th January last on the question of whether alternative claims for compensation or a new lease in lieu thereof would be permissible under the Landlord and Tenant Act. Has there since been any High Court decision dealing with the point, or in which way have recent county court decisions been going ? In other words, can a claim for

a new lease be accompanied by an alternative claim for compensation if the tribunal should decide that the case is not one for a new lease. Any authorities dealing with the point would greatly oblige.

A. The point in question has not been decided by the High Court, and there is no record of the trend of county court decisions, so that the position as at the date of the article is unaltered. The absence of express statutory authority for concurrent claims, however, is no bar to their being advanced, and (as suggested in the article) the worst that can happen is that the tenant will be required to elect which remedy to pursue.

Quiet Enjoyment of Flat.

Q. 2281. The owner of a shop and flat over, has been threatened by the tenant of the flat that he will apply for an injunction to stop the landlord from having let part of the shop as an order office for taxis in conjunction with which business there is erected outside the shop about 30 feet away a petrol pump. The tenant of the flat upstairs maintains that this is a breach of the covenant for quiet enjoyment, and is also a nuisance. The downstairs shop is one of a row of shops, and the local authority has approved the petrol pump, and the objection appears to be ridiculous, but please advise if there is anything in the case made. The neighbourhood is a high-class residential area, but there are several petrol pumps in the neighbourhood.

A. The tenant is mistaken in adopting a literal construction of the above covenant, which does not relate to noise, but is merely a warranty of the title of the lessor. It was therefore held to be no breach of such a covenant where an upstairs flat was let for dancing, to the annoyance of an accountant who had an office in the flat below. See *Jenkins* v. *Jenkins* (1888), 40 Ch. D. 71, in which case, however, the court awarded £20 damages for noise and vibration. The tenant in the present case can only base a claim upon nuisance, and, in view of the presence of shops, it is difficult to see how a taxi office can cause disturbance. It does not appear that the vehicles themselves come and go with greater frequency than if they were private cars bringing customers to the shops. If, however, there is any whistling or calling of taxis, in compliance with orders booked, the tenant might have a claim for nuisance. The local authority's approval of the pump merely means that it complies with the bye-laws, and does not legalise any nuisance caused, e.g., by starting up of engines or sounding horns on departure. It cannot therefore be said that there is no case on nuisance, but the claim will not be against the landlord, as the taxi owner is responsible.

Surrender by Operation of Law.

Q. 2282. A took a five years' lease of Blackacre House. Nine months before the determination of the term he had to leave the district and gave a verbal promise of the first refusal of the residue of his term to B. The landlord and B desired to arrange a long lease to B, and at the request of the landlord, A left the negotiations in the hands of the landlord and B for them to arrange a lease between themselves, to include the nine months unexpired of A's term. A turned down a definite offer from C to take over the unexpired portion of his term because of the agreement with the landlord and B. On Mid-summer Day A handed the key to the landlord and arranged that the landlord should collect the rent of a garage sub-tenant due on the 30th June, and pay A the proportionate part. A further agreed with the landlord to leave certain tenant's fixtures in the house which would be paid for by B, the landlord collecting the money and paying it to A with the garage rent. None of these arrangements were evidenced by writing. Negotiations for a lease between the landlord and B have fallen through, and the landlords now say they hold A liable under his lease. Are they entitled to do so, or has the lease been determined before its expiration by tacit agreement between the parties, and by possession having been re-taken by the landlord ?

A. The acceptance of the key by the landlord, and his unsuccessful attempt to re-let to B, does not estop the landlord from alleging that A is still liable under his lease. See *Oastler* v. *Henderson* (1877), 2 Q.B.D. 575, in which the landlords had even occupied the premises for a short time (for the purposes of their own business) during the unexpired portion of the term. The ground of that decision, however, was that there had been no possession by the landlords inconsistent with the continuance of the defendant's term, whereas in the present case the landlords have gone further, viz., by collecting the garage rent from a sub-tenant. This was one of the factors present in *Reeve* v. *Bird* (1834), 1 C.M. & R. 31, in which it was held that there was a surrender by mutual agreement. The matter may be tested as follows: If the landlord had successfully negotiated with B, could A have refused to recognise the arrangement by still claiming to be lessee ? It appears that A would not have been entitled to adopt that attitude, as laid down in *Fenner* v. *Blake* [1900] 1 Q.B. 426. The absence of writing in the present case is therefore no obstacle to A's claim, as the balance of evidence is in favour of his contention that there was an agreement to surrender, in pursuance of which the landlord acted as A's agent, e.g., for the sale of the fixtures. A is therefore not liable for the rent for the unexpired term of the lease.

Effect of Purchase of Stock in Joint Names.

Q. 2283. A purchased with her own money war loan in the joint names of herself and her daughter, B. She thereafter made a will leaving her war loan to her son, C. On the absence of any evidence to show the intention of A, is B entitled to claim the whole of the war stock by survivorship on half-share, or is B the trustee of the war stock for A's estate ?

A. The position in case of advances by a mother is not very clear. See *Re De Visme*, 33 L.J. Ch. 332; *Sayre* v. *Hughes*, L.R. 5 Eq. 376; and *Bennet* v. *Bennet*, 10 Ch. D. 474. If A was a widow and B was dependent on her (but not otherwise), the opinion is given that in the absence of any evidence the court would now hold that an advancement to B was intended. Evidence can, of course, be adduced either to support or rebut a presumption either of advancement or of resulting trust. If it was held there was an advancement and there is any gift to B by the will, B would be put to her election either to confirm and carry out by transfer the bequest to C or to compensate him of property she takes under the will: see *Grosvenor* v. *Durston*, 25 Beav. 97. If, therefore, property given to B by the will equals or exceeds in value the war stock, no difficulty should arise.

Books Received.

The Conveyancer. A monthly review devoted to matters connected with Conveyancing and Commercial and Mercantile Documents. Vol. 17. No. 3. September, 1931. London: Sweet & Maxwell, Ltd. 3s. net.

The Land Value Tax. By THEODORE J. SOPHIAN, Barrister-at-Law. 1931. Royal 8vo. pp. xvi and (with Index) 36. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 4s. net.

Income Tax Summarised. By W. BARRIE ABBOTT. First Edition. 1931. Demy 8vo. pp. (with Index) 100. London: Gee & Co. (Publishers), Ltd. 4s. 6d. net.

Income Tax Principles. By RAYMOND W. NEEDHAM, K.C. 1931. Royal 8vo. pp. viii and 344. London: Gee & Co. (Publishers), Ltd. 21s. net.

Notes of Cases.

Court of Appeal.

Hearts of Oak Assurance Company, Limited *v.* Attorney-General.

Lord Hanworth, M.R.; Lawrence and Romer, L.JJ.

15th July.

INSURANCE—INDUSTRIAL INSURANCE COMPANY—INSPECTION—WHETHER INSPECTION SHOULD BE IN PUBLIC OR IN PRIVATE — DISCRETION OF INSPECTOR — INDUSTRIAL ASSURANCE ACT, 1923, s. 17—FRIENDLY SOCIETIES ACT, 1896, s. 76.

Appeal from a decision of Luxmoore, J., 75 SOL. J. 373.

The plaintiffs brought an action against the Attorney-General claiming declarations that an inspector appointed by the Industrial Assurance Commissioner under s. 17 (1) of the Industrial Assurance Act, 1923, to examine into and report on the affairs of the plaintiff company was not bound nor entitled to conduct that examination in public, nor entitled to make public the information gained by him in the course of the examination or of the exercise of the powers conferred on him by s. 17 (1) of the Act of 1923 and by s. 76 (5) of the Friendly Societies Act, 1896, or otherwise to make use of such information, save to prepare his report on the affairs of the plaintiff company. Section 43 of the Act of 1923 provided that rules might be made to govern the conduct of inspections, but no rules had in fact been decided upon. The plaintiffs alleged that the inspector had held meetings in public and examined witnesses, and had elicited matters, the making public of which was painful to the feelings of individuals and detrimental to the company's affairs. Luxmoore, J., held that, in the absence of statutory rules, the court ought not to interfere with the discretion of the inspector and dismissed the action. The plaintiffs appealed. The court, Lord Hanworth, M.R., dissenting, dismissed the appeal.

Lord HANWORTH, M.R., thought that as the relevant Acts had not made provision to safeguard the rights of the persons whose conduct was examined, the inference was that the proceedings of the inspector were not of a judicial nature. It seemed unlikely that an inspector appointed under the Act of 1923 for the purpose of making a report to the Commissioners could, at his own discretion, by his own will and insistence, place those involved in the inquiries in a painful, and it might be a humiliating position, when he was not a properly constituted judicial tribunal. His Lordship thought that the inspector would be more likely to elicit the truth in a private inquiry, and it did not seem that the interests of the public required publicity.

LAWRENCE, L.J., said that in the first place the affairs of collecting societies and industrial assurance companies were not private affairs in the ordinary sense. Industrial assurance business had long since been treated by the Legislature as a business which in the public interest should be strictly regulated. The contention that the provisions of s. 17 constituted an invasion of private rights was not therefore well founded. Secondly, it was, in his judgment, unnecessary to determine whether the inspection authorised by s. 17 was a judicial inquiry or not. If it were, there would no doubt be a *primâ facie* presumption that the inspection ought to be held in public, but in his opinion the converse did not hold good. He knew of no case in which it had been held that, because an inquiry was non-judicial, it ought not to be held in public. A serious objection was that the publicity might adversely affect the company's business. On the other hand, if the inspector found it necessary to take some drastic action against the company, to do so after the holding of a secret inquiry behind closed doors would hardly seem fair. In any case, it was difficult to see what jurisdiction the court had to order the inspector to hold the inquiry in private.

ROMER, L.J., also delivered judgment dismissing the appeal.

COUNSEL: *Sir John Simon*, K.C., *J. H. Stamp* and *Blanco White*, for the appellants; *The Attorney-General* (Sir William Jowitt, K.C.), *the Solicitor-General* (Sir Stafford Cripps, K.C.) and *Stafford Crossman*, for the Attorney-General.

SOLICITORS: *Kingsley Wood, Williams & Co.*; *The Treasury Solicitor*.

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

In re Hewitt Bros. Ltd.

Farwell, J. (sitting as Vacation Judge). 26th August.

COMPANY—PETITION—CONSTITUTED BY DEED OF SETTLEMENT—COMPANY REGISTERED UNDER COMPANIES ACTS, 1862 TO 1886—ALTERATION OF OBJECTS—MODERN FORM—SUBSTITUTION OF PROPER MEMORANDUM OF ASSOCIATION—COMPANIES ACT, 1929, 19 & 20 Geo. 5, c. 23, s. 5, Proviso to s. 321, sub-s. (1), s. 334, sub-s. (1).

Petition.

This was a petition by Hewitt Bros. Ltd., a company registered under the Companies Acts, 1862 to 1886, as a company limited by shares, for the alteration and extension of its objects by a new memorandum of association, in modern form, such objects being originally set out in the document under which the company was first constituted. This document purported to be in the form of articles of association or deed of settlement, dated 14th November, 1887, and it began by naming certain persons as parties as in an ordinary deed of conveyance. After a recital there was a covenant by the parties thereto and then followed several clauses. In cl. 4 thereof were set out the various objects of the company, more or less corresponding to the modern form of a memorandum of association. Clause 5 contained the statement as to the capital of the company, but there was no clause stating that the liability of the members was limited, although the certificate of incorporation of the company stated this. The remaining clauses of the deed of settlement were mainly those usually found in modern articles of association. The company was a brewery company and for many years had carried on an extremely successful and profitable business. In 1907, by special resolutions, it turned itself into a private company within the meaning of the Companies Act, 1907, and continued so thereafter. The directors, wishing to substitute a modern form of memorandum and articles of association for the deed of settlement, procured the passing of a special resolution of the company in accordance with s. 117 of the Companies Act, 1929, for this purpose. A petition was accordingly presented to the court praying that a proper form of memorandum of association be substituted for cl. 4 of the deed of settlement above mentioned, and that various alterations and additions be made to the somewhat restricted range of objects set out in the deed of settlement. The proposed memorandum contained numerous additional objects and some new clauses altogether, and which are wider in scope than the original objects. At the hearing before the court it was admitted that, having regard to the fact that the company had been registered under the Companies Act, 1862, the court was prevented from making any order under s. 334 of the Companies Act, 1929, by which a company had power to substitute a memorandum and articles of association for a deed of settlement. Attention was called to the proviso to s. 321 of the Act (Pt. IX), sub-s. (1), which specially exempted a company registered under the Companies Act, 1862, from registering in pursuance of the section, and to s. 334, sub-s. (1), under which companies registered in pursuance of "this part of this Act," viz., Pt. IX, might take advantage of the powers given by that section. Reliance was therefore placed on s. 5 of the Companies Act, 1929.

FARWELL, J., although commenting on the fact that the objects set out in the proposed memorandum of association were in considerably wider terms than those in the old deed of settlement, and that many new objects had been introduced, sanctioned the memorandum as asked for by the petition under s. 5 of the Act, and made an order accordingly.

COUNSEL: *H. S. Preston*, K.C., and *A. R. Taylour*, for the petition.

SOLICITORS: *Collyer-Bristow & Co.*, for *Grange and Wintringham*, Great Grimsby.

[Reported by A. J. FELLOWS, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division

Clark *v.* Clark.

Lord Merrivale, P., and Bateson, J. 4th June.

HUSBAND AND WIFE—SUMMONS FOR DESERTION AND/OR WILFUL NEGLECT TO MAINTAIN—SEPARATION OF PARTIES—WIFE'S LETTER SEEKING RESUMPTION OF CO-HABITATION—NO ANALOGY WITH RESTITUTION PROCEEDINGS—SUMMARY JURISDICTION (MARRIED WOMEN) ACT, 1895 (58 & 59 Vict., c. 39), s. 4—SUMMARY JURISDICTION (SEPARATION AND MAINTENANCE) ACT, 1925 (15 & 16 Geo. 5, c. 51), s. 1, sub-s. (1).

This was the wife's appeal from an order of the Maryport justices dismissing her summons alleging that the husband had "unlawfully and wilfully deserted or neglected to provide reasonable maintenance for her." The facts and argument appear sufficiently from the judgment.

Lord MERRIVALE, P., in giving judgment, said that the present case illustrated the exceedingly difficult task cast on justices by the present condition of the law with regard to the relations between husband and wife, and the wife's statutory right to maintenance under certain limited conditions. The parties had been married twenty-two years, and there was a number of children—a separation took place in January, 1929. The wife summoned the husband for alleged desertion, and the summons was dismissed. Those earlier proceedings were in the minds of the justices when they considered the summons which was the subject of the present appeal. The present summons followed a letter written by the wife's solicitors stating that she was willing to live with him again and do all she could to make a fresh start. It was submitted, there being no evidence of adultery against the wife, that her claim must be treated as one for restitution of conjugal rights, on non-compliance with which the justices would be entitled to make an order for maintenance. That was not the law; and, moreover, it was material that the previous summons for alleged desertion had been dismissed. By s. 4 of the Summary Jurisdiction (Married Women) Act, 1895, a wife could apply for a maintenance order if her husband had wilfully neglected to maintain her, "and shall by . . . such neglect have caused her to leave and live separately and apart from him." Section 1 (1) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, provided that such an order could be made, "notwithstanding that the neglect complained of has not caused her to leave and live separately and apart from him, and accordingly the words (cited above from s. 4 of the 1895 Act) . . . are hereby repealed." But the Legislature had not thereby provided that a married woman, who had not committed adultery, might in any circumstances whatever be entitled to an order for maintenance. The law, on the other hand, still took account of the mutual character of marital obligations. He (his Lordship) was satisfied that the justices had appreciated the substance of the case and thought that the wife had renounced her duties, but the court felt the necessity of knowing precisely on what grounds the justices came to the conclusion that no order ought to be made against the husband. The summons would therefore be sent back to the justices, who might well consider whose fault it was by which the parties were living apart and also the case of *Thomas* v. *Thomas* [1924] P. 194, and the effect of the amendment in the statute. The reference back cast no reflection on the justices.

BATESON, J., agreed.

COUNSEL: *C. L. Beddington* appeared for the appellant wife; the respondent was not represented.

SOLICITORS: *Maples, Teesdale & Co.* for *Lightfoot & Lightfoot*, Maryport.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Collins (by his Guardian) *v.* Attorney-General.

Bateson, J. 12th June.

LEGITIMATION—CLAIM *per subsequens matrimonium*—SUBSISTING MARRIAGE OF PARENT AT DATE OF BIRTH—SUBSEQUENT DISSOLUTION FOLLOWED BY MARRIAGE OF PARENTS—GERMAN DOMICIL—DOCTRINE OF THE *renvoi*—LEGITIMACY ACT, 1926 (15 & 16 Geo. 5, c. 60), ss. 1 (2), 8 (1).

This petition for a declaration of legitimacy was remitted from the County Court to the High Court as being one involving difficult questions of law. The proceedings were brought on behalf of an infant aged four years. He was born at Hamburg, his father being a British subject and his mother a German woman who was then unmarried. At the time of the infant's birth the father was married to another woman. That union was dissolved by a final decree of the Hamburg High Court, in 1928, and the father married the mother at Hamburg in 1929. It was stated that at all material times the domicil of the father and the infant was German, and that under the German Civil Code a person might be legitimated by the subsequent marriage of his parents, and that the fact that one of the parents was married to a third party at the time of the birth was no bar to such legitimation, provided that that marriage had been set aside or dissolved before the marriage of the parents to one another.

Counsel for the petitioner submitted that notwithstanding s. 1 (2) of the Act of 1926, providing that nothing in that Act should operate to legitimate a person whose father or mother was married to a third person when the illegitimate person was born, a declaration could be made in the present case under s. 8 (1) of the Act, which provided: Where the parents of an illegitimate person marry or have married one another, whether before or after the commencement of this Act, and the father of the illegitimate person was or is, at the time of the marriage, domiciled in a country, other than England or Wales, by the law of which the illegitimate person became legitimated by virtue of such subsequent marriage, that person, if living, shall in England and Wales be recognised as having been so legitimated from the commencement of this Act or from the date of the marriage, whichever last happens, notwithstanding that his father was not at the time of the birth of such person domiciled in a country in which legitimation by subsequent marriage was permitted by law. Evidence was given by the father in support of the petition, and by a German lawyer who stated that there was a reference by German law in such a matter to the law of the nationality [in the present case to English law], and if there was a reference back by the national law to the law of the domicil [in the present case to German law] that law would be applied in Germany. By the German civil code the child would be legitimated.

BATESON, J., in making a declaration of legitimacy as prayed, said that he found the paternity of the child proved, that the father was divorced by his former wife, that he was then free to re-marry and had subsequently married the mother, and that he was domiciled in Germany at all material times. There would be a declaration in accordance with s. 8 of the Legitimacy Act, 1926, that by German law the petitioner was legitimate as from the date of the marriage

in 1929, and would in England and Wales be recognised as having been so legitimated from such date.

COUNSEL: *Cotes-Preedy*, K.C., and *Hartley Shawcross* for the petitioner; *Highmore King*, for the Attorney-General.

SOLICITORS: *Pritchard, Englefield & Co.*, for *Matthew Jones & Lamb*, Liverpool; *The Treasury Solicitor.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

"Puffing" at Auctions.

By JOHN STEVENSON, Secretary, Incorporated Society of Auctioneers.

IN the House of Commons recently, Mr. REMER asked the *ci devant* Solicitor-General whether his attention had been called to the recent proceedings in the High Court of *Westby* v. *Noyes* (the Bedford "Book of Hours" case), wherein it was shown that an agent who had not been disclosed to probable purchasers enhanced the bidding for the seller's benefit, as if such agent were a legitimate would-be purchaser. The Member for Macclesfield requested that the Government would take steps to amend the law to make such conduct "conspiracy," and so illegal, and also make it compulsory that auctioneers shall openly declare reserve prices, if any, on behalf of vendors, in order to prevent prices being unduly increased. Sir STAFFORD CRIPPS, in his reply, observed that the jury in the case referred to had found that the agent in question had not been employed "for reward to bid" on the vendor's behalf. He went on to emphasise that a specific amendment to carry out the desired object had been negatived by Parliament in 1927, on the occasion of the debate on what is now known as the "Knock-outs" Act—passed with the somewhat similar object of prohibiting "rings" of dealers from combining to *lower* prices at auctions, and thus injuring the sellers. Apparently, in the circumstances, the Government feel guiltless in this matter, and do not propose to do anything, although, as Mr. REMER pointed out in a supplementary question, the effect was that the trustees of the British Museum had "to pay £7,000 more than they ought to have paid" for this admittedly unique mediaeval work of art.

WHEN "BIDDING-UP" FRAUDULENT.

Neither questioner nor questioned, however, seem to have fully noted previous statutory and case law on this subject. Unless the right to bid has been expressly reserved by a vendor, the auctioneer must not knowingly accept any bid from him or from anyone else on his behalf, nor may he bid himself. This is specifically laid down in the Sale of Goods Act, 1893, which states also that "any sale contravening this rule may be treated as fraudulent by the buyer." The Sale of Land by Auction Act says much the same, while a dictum of the late Mr. Justice WILLES is, in this connexion, well worth repetition. He said: "The ['puffer'] so employed is employed for the purpose of falsely representing that he is willing to give for the article a price he never intended to give. That clearly is evidence of fraud." According to Mr. HEBER HART, K.C., Recorder of Ipswich, and author of a well-known work on auction law, the "courts would hold that no loophole for puffing had been intended to remain," but the regrettable fact that "puffing" does go on will not be denied by any knowledgeable member of the auctioneering profession. Thus, until strong measures are taken to stop it, "puffing," whether authorised or secret, will continue to mar the reputation of even the best auction sales.

NEW POLICE DICTIONARY.

A policeman, giving evidence against a motor-cyclist at Stratford Police-court recently, said: "On the back of his bike the defendant had a pillionaire—a female."

American Assets in Deceased Estates

Solicitors, Executors and Trustees may obtain necessary forms and full information regarding requirements on applying to:

Guaranty Executor and Trustee Company Limited

Subsidiary of the Guaranty Trust Company of New York

32 Lombard Street E.C.3

Legal Notes and News.

Honours and Appointments.

The King has been pleased to give directions for the appointment of Mr. BERNARD HENRY ALFRED FORBES BERLYN (the Second Puisne Judge), to be the First Puisne Judge of the Leeward Islands.

Mr. GORDON H. TAYLOR, M.A., LL.B. (Cantab.), solicitor, Deputy Town Clerk, and also Clerk of the Peace of the Borough of Poole, has been appointed Clerk and Solicitor to the Ruislip-Northwood Urban District Council.

Mr. PERCY T. BAKER, M.A., solicitor, Rochester, has been appointed Clerk to the Medway Catchment Board. Mr. Baker is a partner in the firm of Baker & Baker, solicitors, Rochester, Chatham and Sheerness.

Mr. J. W. ROBERTS, Deputy Clerk to the Colwyn Bay Urban District Council, has been promoted to the office of Clerk to the Council in succession to Mr. James Amphlett, solicitor, who is retiring.

Mr. F. H. SMITH, LL.B., solicitor, Town Clerk of Basingstoke, has been appointed Clerk to the Woking Urban District Council in succession to Mr. Francis J. R. Mountain, solicitor, recently appointed Town Clerk of Gillingham.

Mr. EDMUND SINCLAIR, M.A., solicitor, Aberdeen, has been appointed Town Clerk of Banchory, in succession to the late Mr. J. J. Mackenzie.

Mr. P. G. MELLOR, of the Town Clerk's Department, Wakefield, succeeds Mr. F. W. Lee as Secretary of the Yorkshire Casual Poor Assistance Authority.

Mr. R. D. LOWLESS, solicitor, Town Clerk of Pembroke, was on Saturday, the 29th August, presented with the Freedom of the Borough.

Mr. E. MCNORTON, Deputy Town Clerk of Widnes, has now been appointed Town Clerk of that borough in succession to Mr. P. T. Grove, who has accepted the Town Clerkship of Margate.

Mr. C. H. DIGBY-SEYMOUR, solicitor, Assistant Town Clerk of Liverpool, has been appointed Town Clerk of Worcester.

Professional Partnerships Dissolved.

HENRY LISTER READE and WILLIAM PARSONS READE, solicitors, Congleton, Cheshire, and Biddulph, Staffordshire (H. L. and W. P. Reade), dissolved by mutual consent as from 18th August, 1931. The business will in future be carried on by W. P. Reade in his own name at the above addresses.

CENTRAL CRIMINAL COURT CALENDAR.

The calendar for the September Session of the Central Criminal Court, which opened on Tuesday last, is an exceptionally heavy one. No fewer than 145 persons are awaiting trial. This is partly accounted for by the fact that August is a vacation month. There are three charges of murder, the prisoners being committed respectively from Ashford, Woking, and North London; four cases of attempted murder; three of manslaughter; and seven of wounding, or causing grievous bodily harm. Sixteen persons are charged with bigamy, and fourteen charges relate to burglary and breaking and entering. The list also contains an unusually large number of cases relative to offences against young persons. Mr. Justice Macnaghten will be the presiding judge.

BRITISH SAILORS' SOCIETY.

ANNUAL FESTIVAL DINNER.

The Prince of Wales has consented to preside at the Annual Festival Dinner of the British Sailors' Society to be held at the Guildhall, City of London, on Tuesday, 1st December. The invaluable work of this society among the officers and men of the mercantile marine is well known. Since its inauguration in 1818 the work has steadily increased each year; it has faced heavy odds, and yet the service which has been rendered in the innumerable cases of acute distress is almost unparalleled. In the present time of national anxiety the Society is confronted with the menacing problem of unemployment; it is struggling bravely in the face of extreme difficulties to meet the distressing demands. His Royal Highness, in graciously consenting to preside, once more shows his keen interest in and sympathy with the work of this Society. All donations to be placed on the Royal Chairman's list will be gladly received by Colonel Sir Frederick D. Green, C.C., Chairman of the Festival Dinner Committee, at the Headquarters, 680, Commercial Road, London, E.14.

Insurance Notes.

THE COLONIAL MUTUAL LIFE ASSURANCE SOCIETY LIMITED.

SOME POINTS FROM THE 1930 ANNUAL REPORT AND BALANCE SHEET.

New Business in the Ordinary Department for the year amounted to £7,100,000, an increase over 1929 of £168,000.

Funds increased by £825,000 and now amount to £13,000,000.

Total Income amounted to £2,626,000, showing an increase over 1929 of £165,000.

Bonuses declared on whole life and endowment assurances at all ages ranged from a minimum of £2 3s. per £100 per annum, increasing in accordance with the duration of the policy's existence.

Special Concession to members (who have attained age eighty and who have paid premiums for thirty-five years) releasing them from payment of all future premiums has again been allowed.

Investments.—As an indication of the policy adopted by the Society, £100,000 has been set aside for possible depreciation in security values.

Accident Bonus maintained, the declaration being again at the rate of £2 per cent.

Mr. B. H. DAVIS has been appointed foreign accident manager of the Phœnix Assurance Company, the London Guarantee and Accident Company, and the Union Marine and General Insurance Company. Mr. Davis was previously foreign accident superintendent of these companies.

Mr. G. A. HENDERSON, Adjuster of Marine Claims at the Head Office of the Commercial Union Assurance Company, Limited, will, at his own request, retire on 30th September next, after more than forty years' service with the company. Mr. GORDON GREENHILL, who has been in the service for twenty years, has been appointed as his successor.

VALUATIONS FOR INSURANCE. It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is frequently very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac, a speciality. 'Phone: Temple Bar 1181-2.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th July, 1931) 4½%. Next London Stock Exchange Settlement Thursday, 24th September, 1931.

	Middle Price 9 Sept. 1931.	Flat Interest Yield.	Approximate Yield with redemption
English Government Securities.		£ s. d.	£ s. d.
Consols 4% 1957 or after	88	4 10 11	—
Consols 2½%	56½xd	4 8 6	—
War Loan 5% 1929-47	100½	4 19 6	—
War Loan 4½% 1925-45	98	4 11 10	4 14 0
Funding 4% Loan 1960-90	91	4 7 11	4 8 6
Victory 4% Loan (Available for Estate Duty at par) Average life 35 years	92	4 7 0	4 8 10
Conversion 5% Loan 1944-64	103½	4 16 7	4 16 0
Conversion 4½% Loan 1940-44	97½	4 12 4	4 15 0
Conversion 3½% Loan 1961	78	4 9 9	—
Local Loans 3% Stock 1912 or after	65xd	4 12 11	—
Bank Stock	250½	4 15 10	—
India 4½% 1950-55	75	6 0 0	6 11 0
India 3½%	54½xd	6 8 5	—
India 3%	47xd	6 7 8	—
Sudan 4½% 1939-73	97½	4 12 4	4 12 6
Sudan 4% 1974	89½	4 9 5	4 11 9
Transvaal Government 3% 1923-53 (Guaranteed by Brit. Govt. Estimated life 15 yrs.)	86½	3 9 4	3 18 0
Colonial Securities.			
Canada 3% 1938	90	3 6 8	4 14 0
Cape of Good Hope 4% 1916-36	96	4 3 4	4 14 0
Cape of Good Hope 3½% 1929-49	83	4 4 4	4 19 6
Ceylon 5% 1960-70	101	4 19 0	4 18 6
*Commonwealth of Australia 5% 1945-75	72½	6 17 11	7 0 0
Gold Coast 4½% 1956	98	4 11 10	4 12 6
Jamaica 4½% 1941-71	97	4 12 9	4 13 3
Natal 4% 1937	94½xd	4 4 8	5 5 0
*New South Wales 4½% 1935-1945	55	8 3 8	8 13 9
*New South Wales 5% 1945-65	63	7 18 9	8 0 6
New Zealand 4½% 1945	89½	5 0 7	5 12 6
New Zealand 5% 1946	98½	5 1 6	5 2 6
Nigeria 5% 1950-60	101	4 19 0	4 17 6
*Queensland 5% 1940-60	65xd	7 13 3	8 2 3
South Africa 5% 1945-75	102	4 18 0	4 17 6
*South Australia 5% 1945-75	70	7 2 10	7 6 0
*Tasmania 5% 1945-75	75½	6 12 5	6 15 0
*Victoria 5% 1945-75	70	7 2 10	7 6 0
*West Australia 5% 1945-75	70	7 2 10	7 6 0
Corporation Stocks.			
Birmingham 3% on or after 1947 or at option of Corporation	65	4 12 4	—
Birmingham 5% 1946-56	101xd	4 19 0	4 18 3
Cardiff 5% 1945-65	100	5 0 0	5 0 0
Croydon 3% 1940-60	73xd	4 2 2	4 15 0
Hastings 5% 1947-67	101	4 19 0	4 18 9
Hull 3½% 1925-55	84	4 3 4	4 12 3
Liverpool 3½% Redeemable by agreement with holders or by purchase	76xd	4 12 1	—
London City 2½% Consolidated Stock after 1920 at option of Corporation	55	4 10 11	—
London City 3% Consolidated Stock after 1920 at option of Corporation	65	4 12 4	—
Metropolitan Water Board 3% "A" 1963-2003	65xd	4 12 4	—
Do. do. 3% "B" 1934-2003	65	4 12 4	—
Middlesex C.C. 3½% 1927-47	88	3 19 7	4 11 3
Newcastle 3½% Irredeemable	74	4 14 7	—
Nottingham 3% Irredeemable	66	4 10 11	—
Stockton 5% 1946-66	101	4 19 0	4 18 9
Wolverhampton 5% 1946-56	102	4 18 0	4 16 9
English Railway Prior Charges.			
Gt. Western Rly. 4% Debenture	80	5 0 0	—
Gt. Western Railway 5% Rent Charge	96½	5 3 8	—
Gt. Western Rly. 5% Preference	72½	6 17 11	—
L. & N.E. Rly. 4% Debenture	68	5 17 8	—
L. & N.E. Rly. 4% 1st Guaranteed	60	6 13 7	—
L. & N.E. Rly. 4% 1st Preference	36	11 2 3	—
L. Mid. & Scot. Rly. 4% Debenture	71	5 12 8	—
L. Mid. & Scot. Rly. 4% Guaranteed	62	6 9 1	—
L. Mid. & Scot. Rly. 4% Preference	37	10 16 3	—
Southern Railway 4% Debenture	74	5 8 1	—
Southern Railway 5% Guaranteed	91½	5 9 3	—
Southern Railway 5% Preference	66½	7 10 5	—

*The prices of Australian stocks are nominal—dealings being now usually a matter of negotiation.

SOLICITOR'S MANAGING CLERK, same firm 23 years, pleads fresh start.—"W.B.," c/o Central Discharged Prisoners' Aid Society, Victory House, Leicester-square, W.C.2.

SOLICITOR, experienced in Conveyancing, is open to assist solicitors by post.—Box B., 331, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (26), admitted general experience in country practice, sound knowledge conveyancing and probate; conscientious worker. Small salary. Manchester or Liverpool districts preferred.—Box 840, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (newly admitted), Public School and LL.B., with conveyancing experience, seeks post where further experience may be gained; experienced speaker and would undertake advocacy.—Box 710, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (35), Cambridge graduate, desires Managing Clerkship. Good general experience.—Apply "Alpha," Box 320, Solicitors' Journal, 29, Breams-buildings, E.C.4.

JUNIOR Clerk, shorthand-typist, age 20, with knowledge of Courts and public offices, seeks post as outdoor clerk with good firm; 4 years' experience in solicitors' offices; good references; salary £2 per week. —Box 740, Solicitors' Journal, 29 Breams-buildings, E.C.4.

AN EXPERIENCED unadmitted Managing Clerk with good all-round knowledge of conveyancing, probate, trust and company work, desires engagement and is capable of acting without supervision. West End of London preferred.—Write Box 662, Solicitors' Journal, 29, Breams-buildings, E.C.4.

EX-OFFICERS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 3-4, Clement's Inn, Strand, London, W.C.2 (Telephone Holborn 5769), to whom all replies should be addressed, quoting number of advertisement, date of insertion and the name of this paper.

FULLY-QUALIFIED Civil and Mech. Engineer, age 40, many years' practical experience large constructional contracts, heavy concrete, steel, etc.; fully experienced estimating, costing, sales; controlled many hands, all trades. 13385

SURVEYOR, Valuer and Estate Agent, 11 years' town and country experience; fully conversant with estate and office management, auction sales and general routine; used to responsible positions. 13401

ELDERLY Ex-Officer seeks employment in any capacity; clerkship caretaker, enquiry office messenger, etc.; profession, electrical engineer. Dis. 27

WORK urgently required by Ex-Officer, secretarial, clerical, whole or part time; resident in Sussex or go abroad; well known in S.R.; highest references. 13410

EX-OFFICER, extensive administrative and executive experience, home and abroad; linguist; athletic; widely travelled; undertake anything, go anywhere, as engineer, traveller, secretary, journalist, salesman, organiser, representative, or anything requiring integrity, tact and diplomacy. 13354

EX-OFFICER, good war record, editor, writer, good public speaker, successful charity organiser, publicity, original ideas, energetic, reliable, common-sense tackful; public school. 13391

PRACTICES AND PARTNERSHIPS.

SOLICITOR wishes to purchase established conveyancing, trust and family practice in London, to amalgamate with existing practice. Principals only should apply.—Box 839, Solicitors' Journal, 29, Breams-buildings, E.C.4.

FOR SALE.—Established London suburban practice near busy county and police courts; splendid opportunity for young solicitor; part purchase price can remain.—Apply Box 829, Solicitors' Journal, 29, Breams-buildings, E.C.4.

COLONIAL Firm practising in East Africa would entertain applications for purchase of share in partnership.—Particulars in confidence, Box 807, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, 37, Oxford Graduate, C.O., of wide experience in conveyancing, company, trust and family business, seeks partnership yielding £1,000 to £2,000 per annum net in well-established firm in Liverpool.—Box 770, Solicitors' Journal, 29, Breams-buildings, E.C.4.

YOUNG Solicitor, admitted 1930, desires Junior Partnership in general practice after short preliminary clerkship. Experienced in conveyancing, probate and general country practice, including some advocacy. Capital available.—Box 737, Solicitors' Journal, 29 Breams-buildings, E.C.4.

SOLICITOR (31), formerly a member of the Bar, desires to purchase partnership in well-established firm in London or Southern Counties; thorough general experience in London and provinces; capital available.—Box 686, Solicitors' Journal, 29, Breams-buildings, E.C.4.

OFFICES.

OFFICE.—A Solicitor of 40 years' standing can let a large, light, well-furnished office close to Law Courts. Electric light, telephone, firing, cleaning. Seat in Clerks' office if desired. All inclusive. Available almost immediately.—Address: L. Godbolds Ltd., Advertising Agents, 1, Clements' Inn, W.C.2.

7/8, NORFOLK STREET, STRAND, W.C.2. —Five Offices, store room and private corridor to be Let.—For particulars apply Lift Attendant, Messrs. WHITE & CO., 4/5, Surrey-street, Strand, W.C.2.

OFFICES to Let.—Unique Main Road position. Suitable solicitors, accountants, etc. — Apply Johnson & Black, Ltd., opposite Bakerloo Station, Kenton-road, Kenton. Harrow 4646.

FURNISHED Office (near Bank) available for solicitor; good address; rent £15 per month, including use of general office and reception clerk, telephone, electric light and heating.—Box 832, Solicitors' Journal, 29, Breams-buildings, E.C.4.

TO BE LET.—Bloomsbury, rent £500 per annum; no premium.—Residence in one of the best business thoroughfares, containing good rooms with one suitable for board or committee meetings. The premises are eminently suitable for the headquarters of a Society, Institute, Professional or Trading concern.—Alaway and Partners, 20, Bloomsbury-square, W.C.1. Museum 0431.

OFFICE, with telephone extension, available in Chartered Accountants' offices in Bedford-row. Suit solicitor or London agent of country firm. Messages taken, etc. £15 per quarter —Apply Box 824, Solicitors' Journal, 29, Breams-buildings, E.C.4.

INVESTMENTS.

CHARTERED Accountants have client with experience of Mechanical and Civil Engineering, seeking investment of £1,500, in sound progressive Engineering or Contracting business. Active position required. Must be open to strictest investigation.—Apply, Box 845, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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MORTGAGES.—First-class Securities required. Several funds awaiting investment.—Particulars to H. E. Foster & Cranfield, Surveyors, 6, Poultry, E.C.2.

SOUND BORROWER requires £4,000 at 5½% on first mortgage of block of freehold shop property, excellent position in large South Coast town. annual rentals £485, rising to £535.—For particulars apply Box 836, Solicitors' Journal, 29, Breams-buildings, E.C.4.

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BOOKS AND PUBLICATIONS.

JUSTICE OF THE PEACE, 1903 to 1930, Paper and Reports inclusive to 1916, half-calf; remainder unbound. Also Furniture by selection, and large Milner's Safe.—Box 846, Solicitors' Journal, 29, Breams-buildings, E.C.4.

FOR SALE.—Halsbury's Laws of England, with latest Supplement, also Mews Digest to 1930. All in excellent (practically new) condition.—Box 831, Solicitors' Journal 29, Breams-buildings, E.C.4.

FOR SALE.—48 Vols. English and Empire Digest and 5 Supplements; thin paper edition; very good condition; offers invited.—Apply Box 821, Solicitors' Journal, 29, Breams-buildings, E.C.4.

FOR SALE.—Complete set of latest edition of Encyclopædia of Forms and Precedents, owing to death of late owner. Perfect condition. What offers?—Box 822, Solicitors' Journal, 29, Breams-buildings, E.C.4.

FOR SALE.—Bound Volumes of "Punch," 1879, 1880 and 1881, "Judy," 1877, 1877-8, 1879, 1880 and 1881, and "Fun," 1877, 1878, 1880 and 1881. What offers?—Replies to "Insurance," Box 811, Solicitors' Journal, 29, Breams-buildings, E.C.4.

INFORMATION REQUIRED.

2s. per line.

ALEXANDER GEORGE MACKAY, otherwise ALASTAIR GEORGE MACKAY, son of Alexander Murdoch Mackay and Ann Mackay, née Pugh, who left England probably between 1895 and 1900, or any descendants or anyone having any KNOWLEDGE of his WHEREABOUTS is requested to COMMUNICATE with Messrs. Tamplin, Joseph, Ponsonby, Ryde & Flux, Solicitors, 45, Russell-square, London, W.C.1, England.

RE FRED LESLIE BROWN, deceased, formerly of the Igna Engineering Co., Ltd., of Dudley, and who frequently resided at the Palace Hotel, London, and Yenton Hotel, Erdington, Birmingham.—Will anyone able to give INFORMATION concerning the ESTATE of the above please COMMUNICATE with Bailey, Cox & Co., 10A, Temple-row, Birmingham?

RE GORDON RUSSELL, Deceased.—Will any SOLICITOR or other person having KNOWLEDGE of any WILL made by the above-named deceased, late of "Goodtrees" Cowden, Kent, and 36, Sydney-street, Chelsea, S.W.3, who died on the 5th day of July, 1931, please COMMUNICATE with BARRY O'BRIEN & CO., Solicitors, of 32, Victoria-street, Westminster, S.W.1.

MRS. MAUD DRUMMOND, formerly of 6, Lincoln-street, Sloane-square, S.W.3, understood to have been a nurse at Hawick, N.B., during the war, or anyone knowing of her whereabouts, please write to J. C. and A. Steuart, W.S., 25, Rutland-street, Edinburgh.

IF NELLIE GRACE WILSON, last heard of nine years ago at 54, Park-street, East Greenwich, S.E.10, will COMMUNICATE with Messrs. Stephens & Son, Solicitors, 41, Railway-street, Chatham, Kent, she will hear of something to her advantage.

BOISRAGON, deceased.—COL. GUY HUDLESTON, V.C.—Will anyone having KNOWLEDGE of existence or whereabouts of a WILL or TESTAMENTARY DOCUMENTS or any other papers relating to this gentleman's affairs please COMMUNICATE immediately with Messrs. Finch, Jennings & Tree, 2, Gray's Inn-square, W.C.2.

MRS. ADA LATCHAM, deceased.—Will any Solicitor or other person having any KNOWLEDGE of any WILL made subsequent to the 28th January, 1904, by the above-named deceased, late of 3, Seavale-road, Clevedon, Somerset, who died on the 18th March, 1931, please communicate with Messrs. WEBBER & BULL, Solicitors, 34, Baldwin-street, Bristol.

THOMAS HODGSON, deceased, late Solicitor of Birmingham, died 31st March, 1891.—INFORMATION is desired as to the present addresses of two Grandchildren of the above, viz., MAGGIE HODGSON and HERBERT JOHNSON, by Messrs. Donaldson & Co., of 4 Bloomsbury Place, London, W.C.1, Solicitors on behalf of the Executor of Miss I. E. BARDSWELL, deceased.

By Instruction of the Liquidator, Timberham Hotel (Ltd.) (In Liquidation).

Mr. SIDNEY H. MOTION

will submit for SALE by AUCTION, at the LONDON AUCTION MART, 155, QUEEN VICTORIA STREET, E.C.4, on TUESDAY, 22nd SEPTEMBER, 1931, at 1 o'clock,

THE VALUABLE FREEHOLD, WITH POSSESSION, of the

TIMBERHAM HOTEL (licensed), LOWFIELD HEATH, SURREY.

(on the main London to Brighton road), together with the VALUABLE LAND, the whole comprising about 91 acres.

The property will firstly be offered as a whole. If not so sold the property will then be offered in two lots: Lot 1, the Hotel, etc., comprising about 13 acres: Lot 2, the Land, etc., comprising about 78 acres.

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Messrs. ALLAN PHILLIPS & CO.

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ABSOLUTE REVERSION on decease of lives 61 and 63, to one-sixth of £7,500.—Solicitors: Messrs. Rickerd, Thwaite & Co., 29, Gamage-building, 118-122, Holborn, E.C.1.

ABSOLUTE REVERSION on decease of life 67, to one-fifteenth of about £143,000 and one-thirty-fifth of about £92,000.—Solicitors: Messrs. Ralph Bond, Veitch and Bilney, Norfolk House, Norfolk-street, Victoria Embankment.

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